



## Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**SUBJECT:** EMPLOYMENT LAND  
CONVERSIONS

**FROM:** Councilmember  
Donald Rocha

**DATE:** May 8, 2015

Approved

*Don Rocha*

Date

*5/8/15*

### RECOMMENDATION

That the Council adopt the following recommendations:

1. As part of the General Plan Major Review, direct staff to develop a proposed General Plan policy that establishes criteria for when the City Council will consider employment land conversions, to ensure that there is a clear and transparent standard that all conversion applications will be held to.
2. Should the Council pursue the policy direction recommended above, I would suggest considering whether we should allow the applicant to continue processing the General Plan amendment at 320 Race St. (GP15-008) for a final decision by the City Council at a later date. Ideally, the Council would make a decision on the conversion after the work directed in Recommendation 1 has been completed.

### BACKGROUND

In the past few weeks, we've been told by the Mayor and by the Mercury News that employment land conversions are a very bad thing.

In his memo dated May 10<sup>th</sup>, 2015 the Mayor and his cosigners, Vice Mayor Herrera and Councilmember Jones, ask the City Council to deny a proposed employment land conversion. They assert that "the rules appear consistent and unequivocal: no conversion of industrial land." In its May 1<sup>st</sup> editorial, the Mercury News also recites the evils of conversions. They point out that there are private interests who stand to gain from the Council's conversion decisions: lobbyists "make most of their money as a 'success' fee" and property owners "can flip the land for a 300 to 400 percent profit."

The Mayor and the newspaper are certainly entitled to their opinions, but so are the rest of us on the Council. On some past issues—most notably pension reform—there has been a concerted attempt to hammer the Council into line and shut down open debate or policy alternatives. I hope that that will not be the case on the issue of conversions—it is

an important and complex topic. The Council needs space to have a robust conversation and make our own decision.

We can start that robust conversation by acknowledging that the San Jose City Council approved two conversions in 2014 that jointly converted over 50 acres of employment land to residential uses. Former Mayor Reed and current Mayor Liccardo both supported these conversions. They did not invoke the “no conversion of industrial land” rule.

My newer colleagues may be interested to learn about these conversions. One was for a property on the Alameda and one for the iStar site in Edenvale. Here’s a matrix that compares them to the conversion currently pending at 320 Race St. and the two other conversion proposals that have been withdrawn.

	Conversions Already Approved		Conversions Pending		
Location	NE Corner of The Alameda and Stockton Ave.	iStar site in Edenvale	2829 Monterey Rd.	320 Race St.	1150 Campbell Ave.
Council Meeting Date	June 17, 2014	November 18, 2014	Withdrawn	May 12, 2015	Withdrawn
Acreage of Conversion	5.9 acres	45 acres	7.5 acres	4.10 acres	1.6 acres
Staff Position	Oppose	Support	Oppose	Oppose	Oppose
Planning Commission	Not included in PC recommendation	Support	Oppose	Continue Processing	Continue Processing
Rocha Position	Support	Support	Continue processing applications		
Herrera Position	Support	Support	Oppose	???	???
Liccardo Position	Support	Support	Oppose	???	???
Lobbyist/ Developer	Erik Schoennauer/ Dan Hudson	Gerry DeYoung/ Hunter Storm Prop.	Jerry Strangis	Michael Van Every	Tom Armstrong

As we can see, there are lobbyists, developers and land owners who benefited significantly from the two 2014 conversions. It’s even possible that they reaped a “success fee” or “300 to 400 percent profit” as the Mercury News points out.

## ANALYSIS

Consistency is a basic principle of good government. The Mayor is correct in pointing out that the current General Plan rules boil down to “no conversion of industrial land.” The problem is that the Mayor and many of us on the Council have made decisions in the recent past that are inconsistent with that rule. Instead of creating the “predictability and certainty” that the Mayor says he aspires to, we have on occasion been inconsistent with our own General Plan.



The General Plan exists to provide guidelines for our land use decisions, to help us make them consistent and predictable. The problem we face is that the Council isn't willing to live by the General Plan's "no conversion" rule in all cases. If we truly want "predictability and certainty," we need to replace the "no conversion" rule with one we can actually live by.

Thus, my first recommendation is to ask the General Plan Task Force, as part of the General Plan Major Review, to consider developing a new General Plan conversion policy that will provide clear guidelines as to what criteria the Council should use to decide on conversion proposals. The key point here is that consistency *does not mean* approving every conversion that comes before us. What it should mean is that we establish a standard that helps us determine which conversions might be worthy of approval (like the ones on the Alameda and iStar sites) and which should be denied.

Let me reiterate that I voted for both the Alameda and iStar conversions. I did so because I believed that there was clear and substantial public benefit to approving conversions in both cases. Public benefit is the key, in my opinion. If we are presented with a conversion that only benefits private interests, then we should deny it, but if a conversion meets a high bar for public benefit, then it may be worth considering. When I say "high bar" I mean it—set it sky high for all I care. If we can achieve substantial public benefit for our residents, why wouldn't we want to consider it? Establishing a standard for public benefit would also provide "predictability and certainty," because we would actually be able to live by it—unlike the "no conversion" rule, which we obviously cannot live by.

My second recommendation is that, if the Council wishes to pursue my first recommendation, we consider allowing the application for 320 Race St. to continue being processed. I'm not saying we should eventually approve the project—it may or may not meet whatever standard for public benefit we establish—but having a policy in place before we make a final decision would ensure that whatever decision we eventually make is accountable and transparent.

### **Alameda Conversion**

It may also be helpful to take a closer look at the two conversions the Council approved in 2014.

The first of these was the conversion of 5.6 acres on the north side of The Alameda, between Stockton Ave. and the Union Pacific railroad tracks. The land originally had a General Plan designation of Transit Employment Center, which does not allow residential development. On June 17, 2014 the Council converted this land to an Urban Village designation, which allowed substantial residential to be built on the site. The new designation still required some mixed use commercial to be built, but it wasn't anywhere near the commercial capacity of the previous designation.

Staff strongly opposed this conversion, arguing in a supplemental staff report dated June 6, 2014 that if it were retained as employment land "the block could support approximately 310,000 square feet of commercial development, which could yield 1,400

jobs.” They identified it as “one of two best opportunity sites in close proximity to the Diridon Station that can attract new office development in the near term.” During the May 20, 2014 Council meeting staff went even further, claiming that the site was “a prime example of the perfect spot [for employment] and it’s the kind of land where, if you could point to anywhere, you wouldn’t convert employment land to allow residential.”

In the face of this staff opposition, Mayor Liccardo supported the conversion. He pushed back against staff at the May 20<sup>th</sup>, 2014 Council Meeting, as follows:

It raises the issue that I think Erik Schoennauer raised, which is: are we being too rigid here? We’ve got an opportunity to create an Urban Village; there’s a recommendation to create an Urban Village right across the street. Why do we stop and have essentially a finger of jobs-only land?

It’s a little bit awkward for the Mayor to suggest Planning staff is “too rigid” in opposing a conversion he supports, and then turn around a year later and claim that “the rules appear consistent and unequivocal: no conversion of industrial land.”

It’s also worth pointing out that the proponents of this conversion, Erik Schoennauer and Dan Hudson, didn’t have to go through the privately-initiated General Plan amendment process, as would normally be the case. Instead, the City processed the conversion as a City-initiated amendment, concurrent with adoption of the Diridon Plan. This benefit to the property owner was made possible by a January 25, 2011 memo in which Liccardo and Reed recommended staff analyze a “more flexible approach to land uses” as part of the Diridon planning process.

### **iStar Conversion**

The iStar site is a 74 acre tract of land that was designated by the General Plan as Combined Industrial Commerical. In November of 2014, the council converted a 45 acre portion of the site to designations that allowed substantial residential development.

The iStar project converted a much larger tract of land than the Alameda project, but it was also a significant political priority. Perhaps as a result, Planning staff abandoned their faithful application of General Plan rules and tried to find a way to work iStar through without it technically being a conversion.

Their strategy was to take all of the building floor area capacity that was lost through the conversion of the 45 acre site, and add it on to nearby industrial parcels with existing industrial designations, effectively intensifying the industrial uses allowed on those parcels. What this means is that even though there was a loss of employment land acreage, there wasn’t technically a loss of building floor area capacity. Staff argued that because we preserved the floor area capacity there was no conversion under the General Plan.



This all sounds good, until you actually read the General Plan. General Plan policy FS-4.1 on page 2-19 explicitly contradicted the staff position. It reads in relevant part:

Preserve and enhance the **employment land acreage and building floor area capacity** for various employment activities.

The General Plan doesn't give us a choice between preserving land acreage and floor area capacity, it enjoins us to preserve both. Despite the fact that that policy FS-4.1 explicitly contradicted their position, staff did not analyze it or even mention it in their iStar staff report. Again: I voted for the iStar conversion; I believe it provided substantial public benefits. My point is not that conversions are good or bad, but that we should be honest with ourselves and the public about what we're doing, and should tell people explicitly what our standard is for approving conversions.

### **Open Government**

Some may ask: why is it important that we have a conversion policy that we can actually live by? What's wrong with saying "no conversions" in our General Plan, and then cheating a little bit if we see a conversion we really, really like?

In my opinion, the problem boils down to open and transparent government. If some lobbyists and developers are reaping a "success fee" and "400 percent profit" because of conversions the council approves, while others are being turned down, we need to have a clear and transparent standard to back up those decisions, to ensure the Council is accountable for treating all applicants equitably. If there is no standard, and our criteria for approving conversions remains a black box, speculation will inevitably arise that we are showing favoritism to some applicants.

### **Conclusion**

There's an old saying: "don't pick a fight with people who buy ink by the barrel." Trying to argue with the Mercury News Editorial Board may be a bad idea, but I think this memo makes clear my disappointment in their deeply uncritical support of the Mayor on the issue of conversions. As I think I have shown in this memo, the issue is much more complex than the black and white editorial we were treated to earlier in May.

Just as the Mercury News is now a cheerleader for Mayor Liccardo's conversion position, it was also a cheerleader for Mayor Reed's Measure B position. I think the Mercury News's mistake in both cases was putting too much faith in the opinions and positions of one elected official. Certainly Mayor Liccardo may have good reasons for his complex voting record on conversions, but the newspaper simply ignores that record, allowing him to pretend as though 2014 never happened. What's more, it tries to hammer the rest of us into line without any thought that there might be a worthwhile policy discussion to be had. I encourage my colleagues to follow their own policy judgement. This is a City Council of eleven, not of one. We were elected to make our own decisions based on open and informed discussion and debate.